

for The Defense

The Training Newsletter for the
Maricopa County Public Defender's Office

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VICTIMS' RIGHTS UPDATE

Special Session in Store

Portions of Arizona's new Victims' Rights Implementation Act may be amended by the legislature before its effective date of January 1, 1992. Recently, Arizona Supreme Court Chief Justice Frank X. Gordon, Jr. warned that unless sections of the act relating to victims' privacy rights are not changed there could be a wholesale shutdown on the release of public documents. Liability of public employees is also an issue.

The Act creates a right to privacy for victims in A.R.S. Section 13-4434 that prohibits release of any identifying victim information without the victim's written consent. Otherwise, a court can only release a victim's address, employment, telephone number or other identifying information upon finding that a compelling need for the information exists. Moreover, release of the information triggers liability for an intentional or knowing violation of the Victims' Bill of Rights. Hence, any court file, police report or other public document that has identifying victim information could cause liability if released and would no longer

be "public". The special legislative session to amend the Act will probably be held on December 2, 1991.

Special Actions

The Arizona Supreme Court and Court of Appeals have accepted jurisdiction in two special actions from Maricopa County concerning victims' rights. In Knapp v. Superior Court, Criminal Defense Attorney Carmen L. Fischer was appointed by Judge Fredrick Martone to represent Linda Knapp during pretrial proceedings for her ex-husband's murder re-trial. When defense attorneys requested an interview of Linda Knapp, she claimed she was a victim under the Victims' Bill of Rights and therefore could not be forced to submit to a pretrial interview. The trial court ruled that although Linda Knapp fell within the definition of a "victim" by law, she was a "suspect". A special action was then filed in the court of appeals. While jurisdiction was denied by the court of appeals, a subsequent identical action was accepted by the Arizona Supreme Court. The court ruled that Linda Knapp was a victim under the Victims' Bill of Rights and could not be interviewed prior to testifying in the case. An opinion is to follow. The facts of this case are very unique and may not provide much guidance for other cases.

In Alvarez v. Superior Court, a recalcitrant victim was served with a warrant after her failure to appear and placed in custody by the trial court. Defense Attorney C. Kenneth Ray, II was appointed to represent the victim. He argued that the court's conduct violated his client's rights pursuant to the Victims' Bill of Rights since the victim was being harassed and intimidated by the prosecutor and the court. A special action was filed in opposition to the trial court's order forcing the victim to appear for the next trial date (and presumably testify). The appeals court accepted jurisdiction, however, denied relief. An opinion should follow. This case may address the recurring issue of victims that do not wish to testify or prosecute, particularly when they are related to the defendant.

First Amendment Issues

The U.S. Supreme Court has consistently held that in reviewing legislation impacting free speech that it must consider two issues: 1) whether the practice in question furthers an important or substantial governmental interest unrelated to suppression of expression, and 2) whether the limitation of First Amendment freedoms is essential to the protection of the particular governmental interest involved and is no greater than necessary.

(cont. on pg. 2)

The most controversial and problematic victims' rights provision is the victim's right to refuse interviews. The Victims' Rights Implementation Act further provides in A.R.S. Section 13-4433 that after December 31, 1991, defense counsel or any person acting on behalf of the defendant can only contact a victim "through the prosecutor's office". Like the right to privacy issues discussed above, this statute has First Amendment ramifications, chills the truth-seeking process and makes it more difficult for defense attorneys to evaluate plea offers. While victims may constitutionally not be required to interview, requiring all contact with them through the government appears overbroad on its face.

Practitioners may now need to litigate the First Amendment implications of a statute that prohibits "free speech" in furtherance of another constitutional right; the Sixth Amendment. With the help of First Amendment expert Dick Hertzberg, I have reviewed some cases that may provide argument by analogy to preclude the government from wholesale prohibition of our right to talk to unrepresented witnesses. In Riley v. National Federation of the Blind of N.C., 487 U.S. 781 (1988), the U.S. Supreme Court struck down a North Carolina statute regulating charitable fund solicitations. As the Court wrote "the government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listeners; free and robust debate cannot thrive that is directed by the government".

Two other cases are closer to the issue. Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984) upheld a protective order precluding publication of certain information obtained from pretrial discovery. However, this case dealt with civil discovery. More favorable is Butterworth v. Smith, 110 S.Ct. 1376 (1990), where the Court found that a grand jury witness could not by statute be prohibited from discussing his grand jury testimony. There may be other cases as well and other policy issues that preclude the broad provisions contained in the Act. They will be discussed in future editions of the newsletter.

Other Jurisdictions

In Hall v. Florida, 579 So.2d 329 (1991), a Florida court of appeals reversed the defendant's conviction construing a victims' rights provision. The court ruled that although its constitutional provision granting victims' rights allows a victim to be "present" at all crucial trial proceedings, it does not permit victims or their families to actively participate in the conduct of a trial by sitting at counsel table or being introduced to the jury.

NETWORK:

Please let me know about victims' rights issues that you have and wish to network with other defense attorneys. CJ ^

CAN I KEEP MY JOB?

By Gary Kula

To many of our clients who dropped out of school and have minimal job skills, keeping their jobs while in jail is one of their primary concerns. For clients with this type of background, a good, fair-paying job is nearly impossible to find yet very easily lost. As defense counsel, we need to make our clients aware that they can apply for work furlough, how it works and what they can do to increase their chances of being accepted into the program.

Many of the rigid guidelines which precluded participation in work furlough have been modified. This is fortunate for our clients since prosecutors and the courts have increasingly turned towards the imposition of longer, flat jail terms as an alternative to prison. For our clients' families, the difference between financial self-sufficiency and relying on government assistance often hinges on the client's acceptance into the work furlough program. While the final decision as to eligibility for the program rests with the probation department and ultimately with the court, an informed defense counsel, can impact the decision. In order to help, defense counsel should be aware of the eligibility criteria and we must know how the program works.

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FOR THE DEFENSE

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APPLICATION

An application to the work furlough program should be made as soon as it is determined that a jail sentence may be imposed. It does not matter whether the sentence is handed down out of city court, justice court or even as part of a terminal disposition of probation in superior court. As long as the order of confinement states that your client should be considered for placement in the work furlough program, the application and screening process will be completed. The earlier the application and screening process starts, the better the chances are that your client will be able to begin his or her jail sentence without a significant interruption in work attendance. Early application also allows defense counsel to negotiate with the work furlough officers in the event our client is denied participation in the program. Early intervention by defense counsel may help to remedy problems ranging from insufficient employment documentation to a lack of transportation to and from work.

Unless a client has been screened prior to the change of plea or trial date, the work furlough application form should be picked up at the same time they pick up the presentence questionnaire from the probation department. This application should be completed and returned no later than the first appointment date with the presentence writer. You may reach **Dennis Harrison at 506-3954** if you have any questions about the screening of out-of-custody clients for work furlough. If your client is in-custody, you should contact **Randy Boulais at 506-5875** to arrange a work furlough screening within the jail. To expedite the application process, it would be good practice for you to keep several sets of work furlough applications and agreements on hand to give to your client once it appears that a jail term is possible.

The work furlough application form requires detailed information about employment, work schedules, amount and form of payment, and means of transportation to and from work. If the applicant wants to drive to work, he or she must present proof of valid driving privileges, current license plates, registration, and proof of insurance. For those who are unable to drive, getting rides from family members or co-workers or using a bicycle is suggested. An alternative form of transportation is the city bus. Local bus route #35 makes regular stops near the jail six days a week from 5:00 a.m. until about 8:00 p.m. In order to participate in the program your client must present a reasonable proposal for getting to and from work.

PAYMENT

As a general rule, participants must earn at least minimum wage and be paid by check in order to be eligible for the program. Payment of at least the minimum wage is required to ensure that the participant is able to afford the \$8.50 work furlough per diem fee as well as those costs associated with working everyday such as meals, gas and the like. Participants must be paid by check to allow the work furlough officers to verify the hours worked, wages paid and deductions taken. Once a participant turns in his or her paycheck, a deduction is taken for the \$8.50 per diem and any other payment obligations imposed by the sentencing court. A check is then made out to the participant for the

balance of his or her paycheck. The turnaround time for this procedure is approximately seven days.

An important point to remember is that an applicant must prepay two weeks of the \$8.50 per diem. This prepayment of \$119.00 is designed to allow a participant to keep the entirety of their last paycheck paid prior to their release from jail. The participant thus walks out of the jail with more money in his or her pocket to help ease the transition back into self-sufficiency on the outside. As to prepayment, the inability of an applicant to come up with the full \$119.00 does not necessarily preclude acceptance into the program. The work furlough screener will review each situation individually.

TYPE OF EMPLOYMENT

It used to be that those who were self-employed, employed by a family member or who worked out of a private residence were just out of luck when it came to work furlough. This is no longer necessarily true. An applicant's employment will be considered on a case-by-case basis. The factors to be weighed in determining whether employment is appropriate include the applicant's work history, stability of the employment, the ability of the work furlough officers to verify the participant's wages, hours and whereabouts at any given time and finally, the nature of the employment in relation to the underlying criminal offense committed. A good example of a bad job would be a car thief wanting to work as a parking valet. Employment is also not acceptable if it involves direct contact with alcohol. A job as a waitress may be acceptable; however, if the participant is required to serve drinks, it becomes unacceptable.

Whether a particular job is appropriate depends to a large extent on the individual applicant. An applicant, with defense counsel's assistance, is allowed an opportunity to demonstrate to the work furlough officer that the job is appropriate for the program. If your client is again denied acceptance into the program by the work furlough screener, you should contact the work furlough supervisor directly. If the supervisor agrees with the screener's decision, your only recourse is to try to convince the sentencing court to order your client into the program. If the court refuses your request, you should consider the alternatives of work release or the Durango Skills Center.

NEED NOT APPLY

When it comes to the consideration of the nature of the criminal offense, there is some flexibility as to whether the applicant poses too great a risk to be released. This flexibility is almost non-existent when it comes to most violent offenses, especially those involving weapons. Your best bet is to take your pitch directly to the judge and ask for court-ordered participation in the work furlough program.

There are also a number of other situations which will preclude your client's acceptance into the work furlough program. These situations or circumstances include an extensive criminal history, a violent history, pending additional charges, pending residential treatment or currently being on methadone maintenance.

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JOB SEARCH

The lack of a job does not necessarily preclude placement into the work furlough program. If the court approves work furlough, your unemployed client will be given an opportunity to participate in the Job Search program at the start of his or her jail sentence. The Job Search program gives your client five hours a day (10:30 a.m. -- 3:30 p.m.), five days a week for two weeks to find suitable employment. This program is also offered to those work furlough applicants whose participation in the program was denied as a result of inappropriate employment.

In this Job Search program, your client will be required to document to a work furlough officer his or her attempts at finding employment. These officers will randomly call various work sites to verify that an application for employment had been made. In those rare instances where employment is not obtained during the two-week period, your client will be rolled out of the work furlough program. If your client was diligent in looking for a job, he or she will be given another opportunity to participate in Job Search in about 30 days. If the work furlough officer feels that little or no attempt was made to find a job, a second opportunity to participate in Job Search will not be given.

The Job Search program is only available to clients sentenced to at least 45 days in jail. This is consistent with the requirement that a jail sentence be at least 30 days for work furlough to be approved.

Those who are placed in the Job Search program are not required to prepay the \$119.00 two week per diem fee. Additionally, they will not be assessed the \$8.50 per diem until their first day on the job.

SCHEDULING

Work furlough participants may work up to twelve hours a day, six days a week. If necessary, these restrictions should be modified by the court at the time of sentencing to fit your client's work schedule. The fact that your client works odd shifts, rotating shifts or irregular hours will not affect their participation in the program.

Every Friday, a master schedule is prepared for the following week. A change in shift or work hours can be accommodated as long as the employer provides this information to the work furlough officers prior to the preparation of the weekly master schedule. This information must be received by Thursday evening to be included in the schedule for the following week.

WORK FURLOUGH BASICS

Participants in the work programs are housed in the jail according to their work schedules. This is done to allow greater control within the jail so that everyone within a specified area will be waking, leaving and returning at more or less the same time. It also allows those who are working the night shift to sleep uninterrupted during the day hours.

Each participant is given one locker to store his or her work clothes and supplies. These lockers are randomly inspected by jail personnel. Work clothes may be cleaned in the washers and dryers available within the jail.

SCHOOL

The work furlough program accepts those who wish to continue to attend school during the course of their jail terms. You may also arrange through the work furlough program or the court for your client to be released for both work and school. Unless otherwise ordered by the court, the \$8.50 per diem must be paid by those attending school.

INFRACTIONS

While the work furlough program is monitored solely by the probation department, discipline matters are handled in a joint effort between the probation department and the Sheriff's office. For example, if a participant returns to jail more than an hour late, the Sheriff's office will place a hold on that participant's release. That participant will not be released again for work until the work furlough officers investigate the infraction and approve a lifting of the hold. If a participant commits an act of misconduct while in jail, the Sheriff's office will roll that person out of the work program. Depending upon the severity of the misconduct, discipline may range from a 30-day suspension from the program all the way to being rolled out of the program completely. All participants are required to submit to random breath and urine testing. If a test result comes back positive for alcohol or any prohibited substance, the participant will be rolled out of the program.

TREATMENT PROGRAMS

If the court specifically orders that a work furlough participant attend and participate in counselling or treatment while in jail, the participant's failure to do so will result in his being rolled out of the work furlough program. The treatment programs most commonly ordered by the court as a condition of participation in the work furlough program are AA and sex offender counselling. If a participant is ordered to attend a Victim Impact Panel, a release for that purpose will be allowed.

FACILITIES AND SUPPLIES

Male clients participating in the work furlough or work release programs are housed at the Durango Jail at 3225 West Durango. Women to be released for work are housed at the Estrella Jail located at 2939 West Durango. It is currently planned that all work furlough participants will be housed at Estrella Jail as of January 13, 1992.

Participants in the work programs may bring with them three sets of clothing, five packs of unopened cigarettes, a non-electrical alarm clock and a combination lock. Because a client taken into custody in the courtroom will not be allowed by the Sheriff to take these supplies to jail with him, it is best to ask the court to allow your client to self-surrender at the appropriate jail facility.

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ALTERNATIVES TO WORK FURLOUGH

If your client is not accepted into the work furlough program, you may wish to consider the work release program or the Durango Skills Center. Work release is ideal for the client who has a stable work history and who can be counted on to act responsibly without supervision when let out to work. The Durango Skills Center provides workshop training in job skills so that your client may find employment through the Job Search program.

INQUIRIES WELCOMED

Much of the information in this article was provided by Bruce Atkinson, supervisor of the work furlough program. He stressed throughout our conversation that the work furlough staff welcomes any inquiry and that they are willing to work with defense counsel to facilitate the placement of clients into the work furlough program. **Bruce Atkinson may be reached at 506-5875.**

SUMMARY

Defense counsel should always place a high priority on getting clients into the work furlough program. Early application, as well as intervention into the application and screening process, may help to insure that our clients keep their jobs (or get a job) while serving their jail term. Working not only allows our clients to continue to support their families, but it also may lead them down a path away from the self-destructive behavior that may have brought the jail term in the first place. ^

NEXT MONTH: Durango Skills Center

RECOVERING CLIENT PROPERTY

By Thomas E. Klobas

We are all aware that the Public Defender representation does not go on forever and that once a person is sentenced no further work is required unless there is an appeal. Like nearly all rules, however, there are exceptions. This article is about one exception -- assisting the former client in recovering property held by police agencies.

The process usually starts with a telephone call or letter from a client or their relative. When the judgment is final, and the sentence pronounced, thoughts usually turn toward practical and material matters. It may be triggered by the desire to recover something of sentimental value or merely the need to have property converted to cash for placement in the client's jail or prison account. Whatever the reason, it is considered important by the clients and they seek you out for assistance.

Your first step is to determine if an appeal has been filed, or if not, whether the period for an appeal has run. If a notice of appeal has been filed, or is still possible, attempts at property recovery are usually futile. Of course, all this assumes that what is sought is not contraband, and has not been subject to forfeiture either by civil statute, by plea agreement or court order. Surprisingly, even murder weapons are recoverable once the appeal process is complete.

The next step is to make sure that the property is clearly identified in the discovery materials. All requests, correspondence, motions and orders must specifically identify the item or items by departmental report (DR) and item number.

The quickest, shortest way to handle the client's request is to call or write the prosecutor and ask that he contact the police agency to authorize release of the desired property. Do not expect that the prosecutor's office will be eager to assist you. For one thing, they may have already closed out the file and no longer have access to it. Should this route fail, the next step will be to file a motion with the trial court to release the property. This motion, accompanied by a pre-prepared order, should include the date of sentencing, a description of the item, the date and circumstances of its seizure, the DR number, the item number on the DR, and to whom the property is to be given. It should also include a statement that an appeal was not filed and the time for filing has lapsed, or if filed, is no longer pending. You should also state that there was no other agreement or action taken to preclude return of the item. In search warrant seizures, support of the motion is found in A.R.S. Section 13-3920 which limits police authority to retain non-contraband evidence. The order accompanying the motion should be in the following format:

"Based on the above and good cause appearing, it is hereby ordered that the _____ Police Department release to the custody of (Name), (Street), (City) the property identified as Item __, in DR# _____ taken from the residence of _____, at (Street), (City), on (Date)."

These motions are usually handled by the court without a hearing. An important note: if the client is in custody, the property will have to be received by someone else. The same will apply if the person is on probation and wants to retrieve a seized firearm. If anyone other than a client is the intended recipient, you must accompany the motion with the original of an affidavit by the client authorizing release of his or her property to the individual named in the motion and order. You can prepare the affidavit for the client to sign but always accompany it with a letter which describes the risks taken in giving such authority to another individual.

There are two important goals of which never to lose sight. First, limit your efforts to that described above. Second, never personally retrieve the property. Once you receive the minute entry showing that the court has granted your request, notify the recipient-to-be that they must obtain a certified copy of the court order from the Clerk of the Court which must be delivered to the property custodian of the involved police agency. (In the case of the Phoenix Police Department, the custodian is located at 3405 South Fifth Street.)

Again, there is no requirement that you perform the above service once a client's case is closed. However, the small effort involved may be rewarded by an improved perception by the client of your services. ^

SUBMISSIONS

By Jim Kemper

Imagine yourself in the following not uncommon situation. You have what you think is a very good motion to suppress. One that is dispositive. If you win it, that is. If you do not win it, your case stinks. You haven't a prayer before a jury. So you put on your motion and, for the first time in recorded history, a superior court judge rules against a defendant when he should have ruled for him. What to do?

If you plead your client, an appellate court will not consider whether the trial judge ruled erroneously on your motion. This is because in Arizona a plea operates as a waiver of all non-jurisdictional defenses. State v. Valenzuela, 121 Ariz. 348, 590 P.2d 464 (App. 1978). What this means is that your client, by his plea, gives up the right to complain on appeal about anything but subject-matter jurisdiction and the voluntariness of the plea itself (and he may have to present the latter by way of a petition for post-conviction relief).

Alternatively, you can go ahead and have a jury trial. This will preserve the suppression issue for appellate review. But if your client is facing enhancement allegations this may be a very unpleasant course of action as well. The fact is that your client may be convicted by the jury, get a colossal sentence from the judge, and then have the appeals court rule against him on the issue you told him was so great.

Is there any middle ground? The answer is yes! It is called a submission and if you do not know what a submission is you are lacking a valuable tool of criminal practice.

Where can you find out about submissions? Well, one place you cannot find out about them is in the Arizona Rules of Criminal Procedure where they are not even mentioned. This is because a submission is a procedure which has been manufactured out of two facts; the fact that the parties can waive a jury and the fact that under normal circumstances the parties can decide what the evidence is going to be.

If you start out with the proposition that, in almost all submissions, the judge is going to find your client guilty of something, then one fact of great importance flows from this. That is the fact that by a submission, the prosecutor is going to get the same two things he would get by a plea; he is going to get a certain conviction and he is going to be spared the trouble and expense of a trial. So you are entitled to ask for, and get, a *quid pro quo*.

As you negotiate a submission there are several things to keep in mind. The first has already been mentioned; you can negotiate away enhancement allegations. Or you can negotiate away other counts, or other cases. You can basically negotiate anything you would when you are working toward a plea. If there is a lesser-included offense involved you can come to an agreement that your client will be found guilty of nothing more than that. You can, in addition, come to an agreement as to the body of evidence which the judge will use to make his decision. With enough skill and a lot of luck you may be able to shape that evidence in such a way that the odds of winning the appeal are increased.

As you can see by now a submission is very much like a plea. In fact it is really more like a plea than a trial. Because of this, Arizona case law requires the same advisements so that the record will reflect knowledge and voluntariness.

See, e.g., State v. Porras, 133 Ariz. 417, 652 P.2d 156 (App. 1982).

One final practice pointer. It is in the nature of things that when you are working on a submission you have to keep the judge more informed than you would with a plea. I have not yet seen an entire submission reduced to writing, as one does a plea. But its terms must be spread on the record by dictation to the court reporter. The judge must be informed what the parties have agreed so he can know what it is he can and cannot do.

Taking it step by step, the whole process would go something like this. Having lost your pre-trial motion call the prosecutor and tell him you are willing to submit the matter. Unless he just fell off the truck he will know what you are up to, but it will be a rare case where he will not agree to submit rather than put on a trial. You should by this time have decided what combination of transcripts, police reports, witness statements, or criminalists' reports are best going to serve your client's appellate purposes (obviously the prosecutor is not going to agree on some combination that does not make a *prima facie* case). Then work out all the details and confirm them in writing with a letter to the county attorney.

As all of us quickly learn the offering of pleas becomes very much like an assembly line. But each submission is different so that an in-chambers presentation seems to work better. Explain the situation to the judge with the court reporter present and be prepared to leave him a copy of the agreed-upon evidentiary *corpus*. Usually he will act as if he has an open mind. He probably will make you come back to get the verdict. When you do come back do not plan on a celebration.

^

TRAINING CALENDAR

December 07

Chester Flaxmayer presents "DUI & Field Sobriety Testing" from 8:30 a.m. until 4:30 p.m. at the Hotel Westcourt in Metrocenter.

December 13

The Maricopa County Bar presents "Opening Statements" from 1-5 p.m. in the Board of Supervisors' Auditorium. Speakers are Sam Langerman and Terry McCarthy.

December 14 & 15

The Arizona Capital Representation Project presents "Defending Death Penalty Cases in Arizona: Tough Cases Need Tough Lawyers -- The Courage to Litigate Capital Cases" at ASU's College of Law. Speakers include Tom Henze, Scharlette Holdman, Kevin McNally, Carla Ryan, John Trebon and Denise Young.

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January 02-12

The National Institute for Trial Advocacy presents its Southern California Regional NITA "An Intensive Skills Program in Trial Advocacy" in cooperation with Loyola Law School in Los Angeles, California.

January 06-11

The National Institute for Trial Advocacy presents its "The Master Advocates Program" for advanced and experienced litigators at the University of California School of Law in Berkeley, California.

January 17

The Arizona State Bar presents "The Keys to Effective Trial Advocacy" at the Phoenix Mountain Preserve Reception Center from 8:30 a.m. until 4:15 p.m. Speaker is noted author James McElhaney.

January 18 & 19

AACJ presents "Defending the Difficult Case: Avoiding Big Brother Convictions" in Prescott, Arizona. Faculty includes Sam Guiberson, Tom Henze, Nancy Hollander and Howard Varinsky.

February 28-March 01

The National Criminal Defense College presents "Advanced Cross-Examination" in Atlanta, Georgia.

March 06

The Maricopa County Public Defender's Office presents "Juvenile Justice" at the Maricopa County Board of Supervisors' Auditorium. Topics and speakers will be announced in upcoming issues.

March 15-18

The National Council of Juvenile and Family Court Judges and National District Attorneys Association present the 19th National Conference on Juvenile Justice in Orlando, Florida.

April

The Maricopa County Public Defender's Office presents "DUI: Cross Examination of the Criminalist and Other Trial Practice Issues".

NOTE:

Additionally, noted trial attorney and teacher Terry MacCarthy will be the speaker for an upcoming trial practice seminar. Mr. MacCarthy is the Federal Public Defender for Chicago, a renowned speaker and faculty member of the National Criminal Defense College in Macon, Georgia. ^

OCTOBER JURY TRIALS

September 30

Suzette I. Pintard: Client charged with armed robbery. Trial before Judge Seidel ended October 03. Defendant found guilty. Prosecutor S. Tucker.

Timothy J. Ryan: Client charged with aggravated DUI. Trial before Judge Grounds ended with a hung jury. Prosecutor J. Walker.

Jeffrey A. Williams: Client charged with burglary. Trial before Judge Dann. Defendant found guilty. Prosecutor S. Yares.

October 01

Mark J. Berardoni: Client charged with burglary and possession burglary tools. Trial before Judge Galati ended October 08. Defendant found guilty. Prosecutor L. Schroeder-Nanko.

Tamara D. Brooks and James P. Cleary: Client charged with first degree murder. Trial before Judge Dougherty ended November 01. Defendant found guilty. Prosecutor L. Stalzer.

C. Daniel Carrion: Client charged with aggravated assault. Trial before Judge Schneider ended October 03. Defendant found not guilty. Prosecutor R. Perry.

Thomas J. Phalen: Client charged with two counts aggravated assault and two counts child abuse. Mistrial declared by Judge D'Angelo October 02. Prosecutor D. Greer.

October 03

Charles N. Vogel: Client charged with DUI. Trial before Judge Martin ended October 07. Defendant found guilty. Prosecutor M. Ainley.

October 07

Wesley E. Peterson: Client charged with armed robbery (dangerous) and theft. Trial before Judge Sheldon ended October 09. Defendant found guilty of armed robbery (non-dangerous) and guilty of unlawful use of a weapon. Prosecutor J. Longoria.

October 08

Carol D. Berry: Client charged with aggravated assault. Trial before Judge Hotham ended October 10. Defendant found not guilty. Prosecutor M. Barsickow.

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Thomas M. Timmer: Client charged with resisting arrest. Trial before Commissioner Ellis ended October 10. Defendant found guilty. Prosecutor R. Walecki.

Jeffrey A. Williams: Client charged with four counts child molestation. Trial before Judge Cole. Defendant found guilty. Prosecutor D. Reh.

October 09

Elizabeth S. Langford: Client charged with escape with two priors. Trial before Judge Grounds ended with a hung jury on October 12. Prosecutor D. Flader.

Jeffrey L. Victor: Client charged with sale of dangerous drugs. Trial before Judge Cole ended October 16. Defendant found not guilty. Prosecutor V. Liles.

October 15

Daniel R. Raynak: Client charged with possession of marijuana and possession of dangerous drugs. Trial before Judge Noyes ended October 18. Defendant found not guilty. Prosecutor P. Davidson.

October 16

Larry Grant: Client charged with child molestation. Trial before Judge D'Angelo. Defendant pled out October 21. Prosecutor B. Jorgenson.

October 17

Donna L. Elm: Client charged with DUI. Trial before Commissioner Ellis ended October 21. Defendant found guilty. Prosecutor P. Howe.

Jeffrey A. Williams: Client charged with child molestation and sexual misconduct with a minor. Trial before Judge Gottsfield ended October 23. Defendant found guilty. Prosecutor D. Reh.

October 21

Daphne Budge: Client charged with armed robbery. Trial before Judge Ryan ended with a hung jury October 24. Prosecutor P. Scott.

David R. Fuller: Client charged with aggravated DUI and driving with a suspended license. Trial before Judge Grounds ended October 22. Defendant found guilty. Prosecutor T. Glow.

Thomas J. Murphy: Client charged with endangerment. Trial before Judge Hendrix ended October 24. Defendant found not guilty. Prosecutor T. McCauley.

October 22

Thomas J. Murphy: Client charged with theft, class 3 felony. Trial before Judge Fields ended October 28. Defen-

dant found not guilty by reason of insanity. Prosecutor M. Barry.

October 23

Robert C. Corbitt and Dennis W. Dairman: Client charged with possession of marijuana (over 8 lbs.). Trial before Judge Sheldon ended October 25. Defendant found guilty. Prosecutor R. Harris.

Thomas M. Timmer: Client charged with aggravated DUI. Trial before Judge Hertzberg ended October 28. Defendant found guilty. Prosecutor H. Schwartz.

October 24

Timothy J. Agan: Client charged with possession of marijuana for sale with two priors. Trial before Judge Martin ended October 28. Defendant found guilty (no priors). Prosecutor K. Stuart.

October 25

Leonard T. Whitfield: Client charged with aggravated assault against a police officer. Trial before Judge Katz ended October 25. Defendant found guilty. Prosecutor J. Beatty.

October 28

Eric G. Crocker: Client charged with aggravated DUI. Trial before Judge Hendrix ended October 29. Defendant found guilty. Prosecutor S. Wells.

Thomas J. Phalen: Client charged with burglary. Trial before Judge Dann. Defendant pled out. Prosecutor Wilkes.

Raymond Vaca: Client charged with sale of narcotic drugs with two prior sales. Trial before Judge Grounds ended with a hung jury October 30. Prosecutor J. Martinez.

October 29

James J. Haas: Client charged with robbery. Trial before Judge Seidel ended October 31. Defendant found not guilty. Prosecutor D. Bash.

October 30

Charles N. Vogel: Client charged with possession of narcotic drugs, possession of drug paraphernalia and misconduct involving weapons. Trial before Judge Hotham ended November 05. Defendant found not guilty, guilty and a judgment of acquittal, respectively. Prosecutor M. Daiza.
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Korzep v. Superior Court

96 Ariz. Adv. Rep. 21, September 19, 1991 (Div. 1)

During a domestic dispute, the defendant kills her husband who was assaulting her in the family home. Her conviction is reversed on appeal. *State v. Korzep*, 165 Ariz. 490 (1990). In her petition for special action, defendant argues that A.R.S. Section 13-411(c) requires that a judgment of acquittal be entered for her. The statute states that a person is presumed to be acting reasonably when using deadly physical force in protection of their home. However, the statute provides a presumption of reasonable conduct which, like other presumptions, requires evidence. The presumption is rebuttable. Whether the defendant's conduct was reasonable or not is a question for the jury.

Defendant moves for a new determination of probable cause because the grand jury was not informed of A.R.S. Section 13-411(c). The defendant is entitled to have the grand jury told about A.R.S. Section 13-411.

Defendant claims that any new trial would violate double jeopardy principles. Where a conviction is reversed because of insufficient evidence, the defendant cannot be retried. However, defendant's conviction was reversed for the failure to instruct the jury on A.R.S. Section 13-411. The double jeopardy clause does not prevent retrial of a defendant whose conviction is set aside because of an error in the proceedings.

State v. Superior Court

96 Ariz. Adv. Rep. 60, September 24, 1991 (Div. 1)

As part of a plea agreement, the State and the juvenile's attorney agreed to waive a juvenile court hearing on transfer and enter a plea as an adult. The juvenile court is not required to follow the stipulations of the parties to transfer a juvenile for adult prosecution.

State v. Anaya

96 Ariz. Adv. Rep. 133, September 19, 1991 (Div. 2)

The defendant is convicted of aggravated assault and endangerment. During the jury *voir dire*, his co-defendant's counsel used preemptory challenges to remove two black venire persons. Defendant objected but the trial court found that *Batson v. Kentucky*, 476 U.S. 79 (1986) did not apply to co-defendant's counsel. The trial court should have required co-defendant's counsel to offer a racially neutral explanation for the preemptory challenges. The matter is remanded to see if the preemptory challenges were properly exercised.

During opening statement, the prosecutor stated that the co-defendant knew a lot about this case and there are certain things that we do not know. There was no objection to the comment. No fundamental error occurred because the prosecutor reminded the jury that the defense had no

responsibility to present any evidence and both defendants testified.

During trial, the prosecutor asked a witness if he heard the co-defendant make an exculpatory post-arrest statement. The co-defendant did make some post-arrest statements and his right to post-arrest silence was not violated. Further, even if the co-defendant's rights were violated, the defendant in this appeal was not prejudiced.

At trial, the prosecutor presented evidence of the defendant's voluntary statements. When police officers declined to remove his handcuffs, he refused to make any further statements. It is not error to allow testimony that a defendant makes some statements to the police then terminates the conversation. *State v. Robinson*, 127 Ariz. 324 (App. 1980).

During closing argument, the prosecutor told the jury that they, like him, were basically trusting persons. The prosecutor also remarked that self-defense must be the sole motivation for the use of force. The "trusting person" comment did not constitute improper vouching for a witness. The self-defense comment was not a misstatement of the law and the jury was correctly instructed on the law of self-defense.

At trial, the jury was instructed on attempted aggravated assault as a lesser-included offense of aggravated assault. Any error was harmless because the jury convicted the defendant of the higher offense, rejecting all lesser-included offenses.

The defendant was convicted of aggravated assault. His co-defendant was convicted of attempted aggravated assault. Arizona permits inconsistent verdicts and no error occurred.

Prior to trial, the defendant filed a pleading entitled "Pretrial Motions". This pleading requested, among other things, that the voluntariness of the defendant's statements be considered. The defendant is responsible for properly raising issues such as voluntariness. The defendant failed to provide the court with any factual basis for suppression of this evidence. The written motion submitted was insufficient to raise the issue.

State v. Bravo

96 Ariz. Adv. Rep. 140, September 24, 1991 (Div. 2)

The defendant is taken into custody and placed in jail. While in custody, he exhibits psychotic behavior. He is placed upon medication and later confesses to first degree murder. Defendant claims that his statements were involuntary due to forced medication. The defendant previously litigated this issue in *State v. Bravo*, 158 Ariz. 364 (1988) and is prohibited from relitigating this matter by the "law of the case" doctrine. As to any new claims under the Arizona Constitution, the language is the same as found in the Fifth Amendment of the United States Constitution and the court sees no reason why there should be a different result under the Arizona Constitution. Further, the defendant never asserted that his statements were involuntary at his retrial. Finally, even though the defendant at one point invoked his Miranda rights, a defendant can waive this request if he initiates further conversation with the authorities.

(cont. on pg. 10)

At his first trial, the defendant was acquitted of armed robbery charges. At his second trial, the State contended that burglary was the underlying felony for the first degree felony murder charge. Defendant claims that his double jeopardy rights under Grady v. Corbin, 110 S.Ct. 2084 (1990) were violated. The double jeopardy clause does not prevent the government from retrying a defendant who succeeds in getting his first conviction set aside on direct appeal. The conviction at the first trial for first degree murder would have stood had it not been reversed on appeal. Since defendant had not been acquitted of the felony murder charge and since that conviction has been reversed, he can be retried for that charge.

Defendant was charged with the robbery of one person and the later murder of another person. He moved to sever these matters but his motion was denied. The State contends that the offenses were properly joined as part of a common scheme or plan and because they were connected together in their commission. While the same weapon was used and both crimes involved robbery, there were striking differences between the events and they were not properly joined as common scheme or plan. However, the crimes were connected together in their commission. The bulk of the evidence related to the defendant's confession and the testimony of ballistic experts. Where most of the evidence admissible to prove one offense is also admissible to prove the other, it was not error to deny the motion to sever.

Defendant was originally given consecutive sentences for armed robbery and felony murder. He initially received full presentence incarceration for the armed robbery charge. When he was later acquitted of the armed robbery charge, he requested presentence incarceration credit against the murder conviction. The trial judge denied it and only gave him credit from the date of the Supreme Court decision reversing his convictions to the date of sentencing. A.R.S. Section 13-709 requires presentence incarceration credit. While a defendant is not entitled to credit on consecutive sentences, where one sentence is later overturned, the statute requires that he receive that presentence incarceration credit as to the other charge.

State v. Ingram

96 Ariz. Adv. Rep. 102, September 26, 1991 (Div. 1)

Defendant was found guilty of residential burglary and residential trespass. As the trespass was a lesser-included offense of the burglary, these were inconsistent verdicts. The trial judge ignored the trespass verdict and entered judgment only for the burglary. On appeal, defendant claims that he should have only been convicted of criminal trespass because the jury was instructed that they could only find the defendant guilty of trespass if the evidence does not show beyond a reasonable doubt that the defendant was guilty of burglary. The Court of Appeals holds that the trial judge acted properly. First, the defendant did not object at trial and deprived the trial judge of the opportunity to reinstruct the jury and give proper verdicts. Second, appellate courts have traditionally upheld dismissing the lesser of the two inconsistent verdicts.

Defendant contends that the jury should have been instructed that non-residential burglary is a lesser-included

offense of residential burglary. Defendant did not request this instruction and waived the issue absent fundamental error. Non-residential burglary is not a lesser-included offense of residential burglary.

In post-conviction proceedings, the defendant claims that the State failed to preserve the fingerprints. However, the defendant gave the police an explanation for his conduct leaving them no reason to take fingerprints. In any event, fingerprint evidence would have had no bearing upon the case. Defendant also claims that the State was required to have a handwriting expert verify a signature on certain exhibits. The exhibits presented by the State bear no such signature. As to the signature on the defendant's exhibits, the State is not required to prove their authenticity.

Defendant claims he should have been convicted of non-residential burglary because there was no evidence to support any finding that the apartments were fit for human habitation. The evidence showed that while most of the apartments were unoccupied, they were intended for residential use. That is all that is necessary to support a charge of residential burglary.

The defendant claims he received ineffective assistance of counsel because his lawyer failed to properly investigate the case and failed to file certain pretrial motions. There was an evidentiary hearing held on the failure to investigate claim. None of the evidence presented would tend to establish the defendant's innocence and the defendant has failed to show that the trial judge abused his discretion in not believing his witnesses. As to the failure to file certain motions, a motion to remand to the grand jury and a Rule 8 motion would not have been granted. Defendant received effective assistance of counsel.

State v. Fancher

96 Ariz. Adv. Rep. 118, October 1, 1991 (Div. 1)

Defendant was charged with criminal damage and was convicted at a bench trial of a class 2 misdemeanor. At the restitution hearing, defendant was ordered to pay nearly \$1,200, though the jurisdictional limit for class 2 misdemeanor criminal trespass is \$250. A defendant cannot be required to pay restitution in an amount exceeding statutorily prescribed monetary parameters for the crime for which he pleads guilty, absent an agreement. In this case, the defendant did not plead guilty but was found guilty after a trial. A.R.S. Section 13-603(c) allows for restitution to the victim in the full amount of the economic loss. So long as the procedure leading to a restitution award satisfies due process, a defendant can be required for damages beyond the jurisdiction limit for the crime for which he is convicted. The determination of the amount of restitution is part of the sentencing function of the court, done under different rules than the adjudication of guilt.

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State v. Hardin

96 Ariz. Adv. Rep. 156, September 30, 1991 (Div. 2)

Following a high speed chase and crash, defendant was charged with several felony offenses and misdemeanor DUI. Defendant later was indicted on nine felony counts. Subsequently, defendant pled guilty to misdemeanor DUI in a municipal court. The superior court judge later dismissed the felony DUI counts. The State appeals the order on the basis that the felony indictment deprived the city court of jurisdiction over the misdemeanor charge. The filing of indictment in superior court does not deprive the city court of its jurisdiction.

The State also contends defendant waived the defense of double jeopardy by entering a plea in the city court with full knowledge of his superior court indictment. The defendant in a criminal case is entitled to take advantage of any legal avenues open to him. The State can avoid the result in this case by securing the dismissal of the city court charges when it files a supervening indictment.

The State also claims that Grady v. Corbin, 110 S.Ct. 2084 does not require dismissal under the double jeopardy clause because the parties are different in superior and municipal court. The parties clearly are the same. The State and the defendant are plaintiff and defendant in both cases.

State v. Lopez

96 Ariz. Adv. Rep. 13, September 17, 1991 (Div.1)

Defendant is charged with child molestation and is held in custody. A detective comes to speak to him about a different case. The defendant tells the detective "My attorney would shit bricks if he knew I was talking to you right now. He told me not to discuss this case with anyone." On appeal, defendant claims that this statement invoked his right to counsel. The defendant did not intend his discussion of his representation as a request for an attorney. In light of all the circumstances, the defendant's statement was not an invocation of his right to counsel.

Defendant claims that his Sixth Amendment right to counsel was violated where the interrogating detective knew the defendant was represented. Defendant did not raise this argument in the trial court and waived it on appeal.

At trial, defendant's sexual acts with other children were admitted as prior bad acts to show an emotional propensity for sexual aberration, as the acts were similar and the State also had expert testimony showing that the acts were aberrational and showing a continuing emotional propensity to commit the crime charged.

Defendant asserts that the admission of prior bad acts to show an emotional propensity for sexual aberration under Rule 404(b) violates the equal protection clauses of the United States and Arizona Constitutions. As the defendant is not denied a fundamental right nor is he a member of the suspect class, there only needs to be a rational basis for the rule. The unusually secret nature of the crime and the resultant problem of proof by the prosecution justifies a carefully circumscribed exception to the general prohibition of prior bad act evidence.

At trial, an expert testified for the State. Defendant claims that the expert's testimony offended the limitations

on such testimony found in State v. Tucker, 165 Ariz. 340. An expert may testify to general characteristics of sex offenders and victims but not to the facts of the case. The expert testified only to the permissible areas for such testimony in this case.

At trial, a defense expert testified that defendant was sexually seductive but not violent. Defendant claims now that the cross-examination of his expert witness was improper. Defense counsel never made the proper objection and the issue is waived on appeal.

At trial, defendant wished to impeach a witness with evidence of his prior juvenile adjudication for child molestation. While such evidence can be admissible under Rule 609(d), the trial judge heard the evidence *in limine* and did not abuse his discretion in precluding impeachment on this basis. Defense counsel also wished to call someone who would testify that the witness had seen "aliens". The witness was not asked this question on cross-examination and the incident could not otherwise be proven through extrinsic evidence.

State v. Maximo

96 Ariz. Adv. Rep. 137, September 19, 1991 (Div. 2)

Defendant was convicted of attempted second degree murder, armed robbery and other charges. At his accomplice's preliminary hearing, the prosecutor questioned the defendant under a grant of immunity. Defendant later moved to have the prosecutor disqualified, contending that it was the only way to insure that the State did not use his immunized testimony against him. While any evidence derived from any answer given in response to a grant of immunity must be excluded, the State may prove by a preponderance of the evidence that its case is not based upon such information. In this case the prosecutor demonstrated through defendant's confession and other aspects of the investigation completed before the immunized testimony that the prosecutor learned nothing from the immunized testimony not already known from the confession.

At trial, the prosecution introduced a knife found in the accomplice's possession. Defendant claims there was no foundation for the knife. Proper foundation would be identification testimony of a witness who has knowledge of the exhibit. The detective who arrested the accomplice and found the knife identified the exhibit.

At trial, photographs showing blood on the wall and floor of the victim's home were admitted. Defendant claims the photos were inflammatory and gruesome. Photos, even gruesome ones, are properly admissible to illustrate testimony and corroborate the State's theory of the offense. The photos corroborated the testimony at trial and were relevant to the assault and murder charges.

The police obtained defendant's parent's consent to search his living quarters. Defendant lived in a small apartment detached from the main house. A consent search is valid if the third party has common authority over or other sufficient relationship to the premises. Defendant's parents owned and lived on the premises, had a key, and entered his detached bedroom at will.

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Defendant claims that his statements were obtained in violation of his privilege against self-incrimination. While at the station house, the detective showed him three pictures and asked him if he wanted to talk about these people. When the defendant stated that he did, the detective read him his Miranda warnings. The defendant received his warnings before making any incriminating statements and the detective's words did not constitute interrogation.

One police officer mentioned at trial that the defendant was in jail on an unrelated matter. Another detective said that the defendant met his accomplice in prison. Defense objections were sustained and the jury was instructed to disregard the comments. Defendant claims he was also entitled to a mistrial. The trial judge acted within his discretion in giving a curative instruction and denying the mistrial. There was also overwhelming evidence of defendant's guilt. There was no abuse of discretion in denying a mistrial.

State v. Smith

96 Ariz. Adv. Rep. 10, September 17, 1991 (Div. 1)

Defendant pled guilty to burglary and theft. He had taken a direct appeal and a petition for post-conviction relief. He subsequently filed a petition for writ of *habeas corpus*, which the trial court treated as a second petition for post-conviction relief. Defendant requested the appointment of counsel. The trial court denied the request. Defendant claims that he is entitled to counsel because he is raising a claim of ineffective assistance. In his first Rule 32 petition, the defendant claimed ineffective assistance of appellate counsel. In his second petition for post-conviction relief, defendant raised a number of claims which were precluded and claimed the lawyer appointed to represent him on the first petition for post-conviction relief was ineffective. The trial judge properly focused on the merits of defendant's claims. He properly found that defendant's claims were precluded and that this latest claim of ineffective assistance of counsel would undermine the new rule. In order to gain new counsel, all the defendant would have to do is urge the ineffectiveness of previous counsel. Such an interpretation would undermine the intent of the rule.

The defendant argued that his claims regarding the lawfulness of his consecutive sentences were not precluded due to a significant change in the law. Defendant relies upon an unpublished memorandum opinion decision. Such decisions have no precedential value and are not a change of law. The other case on which he relies was decided before any of the events in this case and was also not a change of law. Further, State v. Henry, 152 Ariz. 608 (1987) refers only to enhanced sentences and defendant did not receive an enhanced sentence.

Defendant also claims that he is entitled to an evidentiary hearing because the State asserted that his claims were precluded. The State pled preclusion in its response and defendant acknowledged that four of his claims had been denied on appeal or the first petition for post-conviction relief. A failure by counsel to raise all claims a defendant wishes does not amount to ineffective assistance of counsel. No evidentiary hearing was required.

Defendant also claims that the improper use of a prior conviction in imposing an aggravated sentence is not

precluded due to his ignorance of the appellate record. The defendant submitted a supplemental brief to his direct appeal and has failed to overcome the inference of waiver in Rule 32.2(c). There is also no merit to his claim as he did not receive an aggravated sentence. A trial judge is not required to articulate the reasons for consecutive sentences.

State v. Tober

96 Ariz. Adv. Rep. 91, September 26, 1991 (Div. 1)

The defendants were convicted of sale of unregistered securities and sale of securities by an unregistered salesman. The defendants sold investors a promissory note and an "option agreement". The non-negotiable note provided for an interest rate of 12%. The "option agreement" granted the lender the option of exchanging the note for an assignment of units in a limited partnership.

Defendant claims that the trial judge erred in denying his motion for judgment of acquittal because there was insufficient proof of a "security". An attorney from the Arizona Corporation Commission testified that the promissory notes met the definition of security found in Amfact Mortgage Corporation v. Arizona Mall of Tempe, Inc., 583 F.2d 426 (9th Cir. 1978). Her opinion was sufficient evidence to deny a motion for judgment of acquittal.

Defendants argue that the statutory definition of "security" is unconstitutionally vague. A.R.S. Section 44-1801(22) provides in part that security means "any note". Defendants contend that some notes are clearly not securities and the statute is vague. While the definition of a security as "any note" is not in and of itself vague, the problem arises because not every note is a security. Under Arizona securities law, defendants are held to a strict liability standard. The absence of an intent to violate the law renders unconstitutionally vague an otherwise facially valid statute. There is also no limiting construction that can be used to cure the constitutional infirmity. Defining security as "any note" is constitutionally vague, in violation of the United States and Arizona constitutions. (See also dissent.)

State v. Tykwinski

96 Ariz. Adv. Rep. 38, September 19, 1991 (Div. 1)

Police were searching for a small brown vehicle with two occupants in connection with a murder. Roadblocks were set up after the shoot-out. At one roadblock some eight miles east of where the murder suspects were last sighted, some 100 vehicles were detained. The passenger area and trucks of all vehicles were inspected for suspects. Each vehicle was detained no longer than one or two minutes. When defendant rolled down his window, the police officer smelled marijuana. One defendant was asked to step out of his vehicle and was patted down. When asked if he had any marijuana, the defendant handed over a film canister containing marijuana. The vehicle was then searched.

(cont. on pg. 13)

Defendants claim that the trial judge improperly denied their motion to suppress. Defendants argue that the initial stop was unconstitutional because the officer had no individualized nor founded suspicion that these defendants were involved in the murder. The Fourth Amendment imposes no irreducible requirement of individualized or founded suspicion. United States v. Martinez Fuerte, 428 U.S. 543 (1976). The Fourth Amendment does not invariably require the police to have an individualized suspicion before they may validly stop a vehicle at a roadblock. Roadblock stops, like check-point stops, involve minimal intrusion and do not require individualized suspicion. Given the gravity of the problem, the need to take strong action, and the minimal intrusion created in this circumstance, the police did not violate the Fourth Amendment. Under these circumstances, the roadblock stop did not violate the Fourth Amendment to the United States Constitution nor Article II, Section 8 of the Arizona Constitution.

State v. Webster

96 Ariz. Adv. Rep. 131, September 19, 1991 (Div. 2)

Police, driving in a neighborhood noted for gang activity, notice a car with its taillight out. Police followed the car until it stopped. The driver and two passengers began to walk away. Police noticed that one passenger was wearing clothes indicating possible gang membership. For safety purposes, the police put the defendant back in the car. The defendant was wearing two pagers which beeped during the stop. The officer then observed the defendant unzipping his pants, removing something, and letting it fall to the ground. Defendant then tried to cover the item with his foot. The item was a package containing crack cocaine.

Defendant contends that the officer's command to return to the car was a seizure under the Fourth Amendment and the results of the search should have been suppressed. The car had been legally stopped and it was reasonable for the officer to order the defendant back into the car for safety purposes. The police action was reasonable even if this officer did not feel personally threatened. (See also dissent.)

Defendant claims the trial court erred in denying his motion for judgment of acquittal because his conviction rested solely on circumstantial proof. Circumstantial evidence has no less probative force than direct evidence and no abuse of discretion occurred. ^

Arizona Advanced Reports case summaries are written by Robert W. Doyle and prepared for use by Maricopa County Public Defenders.

PERSONNEL PROFILES

Five new law clerks began their work at our office in November:

Suzanne Heiler earned her law degree from ASU this May. For the last five months Suzanne has worked as a law clerk for Martin, Hart & Fullerton. She previously clerked for Gilcrease & Martin. Suzanne is assigned to the Juvenile Division.

Paul Ramos received his law degree from ASU in May of this year. During the summers of 1989 and 1990, Paul served as legal extern at the U.S. Equal Employment Opportunity Commission and the Industrial Commission of Arizona, respectively. Paul will join Trial Group C.

Genii Rogers was awarded her law degree from ASU this summer. Prior to joining our office, Genii was employed as a law clerk at Skeens and Anderson. In the summer of 1990, Genii worked for a brief period as bailiff for Commissioners Yancy and Jones. Genii will be part of Trial Group B.

Jeanne Steiner, who will receive her law degree in December from the William Mitchell College of Law (St. Paul, Minnesota), is a visiting student at ASU. Jeanne has a B.S. in Legal Assistance and Spanish, and served as a certified student attorney at the Ramsey County Public Defender's Office in Minnesota. Jeanne will join Trial Group D.

Terrie Walton earned her law degree in May from ASU. From January to May of this year she worked as a legislative intern at the Arizona House of Representatives. Prior to that she served as a student attorney at the ASU Law School Clinic. Terrie will go into Trial Group A.

Three new office aides began working this month:

Matt Avey has been added to our Mesa office, splitting his time between Trial Group C and Mesa Records. (Kelly Ray continues as a full-time office aide in Group C.)

Julie Avilla replaced Mike Sisco in Trial Group B.

Husam "John" Zuraikat started as an aide in Records.

Movement within the office:

Stephanie Christie is the 10th floor receptionist.

Heidi Hostetler now works full-time in Records.

Elia Hubrich will assist Brenda Birkhimer, Teresa Campbell, Joan Jezierski and Rose Salamone with clerical tasks.

Mike Sisco, who now is working part-time, is assigned to Trial Group A. ^

STATE OF ARIZONA THE OATH OF ADMISSION TO THE BAR

I do solemnly swear:

I will support the Constitution of the United States and the Constitution of the State of Arizona; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval; I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any considerations personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice, so help me God. ^

BULLETIN BOARD

EXTERN PROGRAM

Our office will be sponsoring an extern program with the ASU College of Law in the Spring of 1992. This program is designed to allow third-year students, pursuant to Rule 38(e), to try cases under the supervision of a practicing attorney. Five students will be assigned to handle misdemeanor DUIs in various justice courts throughout the valley. The students will receive five (5) credit hours for their participation in the program. They will be supervised by Gary Kula (of Trial Group D).GK^

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SPEAKERS' BUREAU

Our office is in the process of establishing a Speakers' Bureau so that we will have a ready list of attorneys who are willing to speak to various groups on the subject of the Public Defender's Office and related legal issues. If you are interested in participating, please contact Georgia Bohm in our Training Section.

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SUBSCRIPTIONS

FOR THE DEFENSE, Copyright, a Maricopa County Public Defender's Office monthly Training Newsletter. A limited number of subscriptions are available at \$15.00 per year, for a subscription period of October 01 through September 30. For information, please telephone the staff at (602) 506-8200.